19 December 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with the Murphy Commission to Discuss William R. Harris' Issue Paper

1. At the request of the Commission on the Organization of the Government for the Conduct of Foreign Policy (Murphy Commission), I met with the Commission on 16 December to go over certain legal and legislative matters which had been put in an issue paper for them. (Copy attached.) Mr. Lawrence Houston had also been invited. Present from the Commission were Robert D. Murphy, Chairman; Dr. David M. Abshire; William J. Casey; and staff members Francis O. Wilcox, Fisher Howe, and Thomas J. Reckford. Also present was William R. Harris, who had prepared the basic submission to the Commission entitled "Legal Authority for the Conduct and Control of Foreign Intelligence Activities." The Chairman requested that I comment on the issues paper.

2. Issue 1: "Should the Commission emphasize that the intelligence community must comply with the laws of the United States?"

The paper referred to prior intelligence activities of questionable legality, citing the "Huston Plan" and assistance to the White House "plumbers." There were three options specified: (a) that the Commission viewed current intelligence activities as in conformance with the law; (b) to reaffirm the importance of compliance with the law; and (c) to say nothing. I indicated that option (a) certainly was suitable from our viewpoint and, furthermore, was true. I pointed out that Tom Huston had testified regarding the Agency's participation in the "Huston Plan" before the Senate Armed Services Committee to the effect that the recommendation made with respect to CIA in the "Huston Plan" was simply that CIA increase its coverage of foreign activities.

25X1

3. Issue 2: "Is additional or clarifying legislation desirable for the conduct or control of foreign intelligence activities?"

"a. to enhance criminal sanctions for unauthorized disclosure of intelligence sources and methods"

We discussed sources and methods legislation in some detail, pointing out the Director's strong view that criminal sanctions are needed in view of the inadequacy of existing law. William Harris agreed that legislation was desirable but seriously questioned whether we should seek an injunction. I pointed out that we strongly favored an injunction and this had been concurred in by the Department of Justice. I added that there were some other questions that we were still working with Justice on and, furthermore, I would be working more with Mr. Harris. It was suggested to the Commission that its position could well be that it supported sources and methods legislation without endorsing any particular version of such legislation.

"b. to establish the National Security Agency as an independent agency"

I indicated we took no strong position on legislation to establish NSA as an independent agency, but queried what this would accomplish. It was also indicated that this might not be the time for congressional review of NSA's activities in detail as would undoubtedly occur if legislation were sought.

"c. to authorize collection of information about multi-national entities"

I indicated the Agency saw no need for this legislation since we were authorized under existing law and directives to secure such foreign intelligence.

"d. to establish standards for domestic or transnational collection of intelligence"

It was indicated that we saw no need for legislative standards in this area. Harris indicated he had been informed

by the NSA General Counsel that such legislation was necessary. (I am certain that he has garbled some legal problems in connection with transnational intelligence arising out of inadvertent surveillance of Americans followed by discovery motions in subsequent prosecutions.

"e. to balance the duties of the DCI for the protection of sources and methods with the duty to supervise declassification of foreign intelligence information."

It was pointed out that E.O. 11652 deals with declassification. Further, the new Freedom of Information Act provides for declassification reviews and any additional legislation for the DCI in this area was simply unnecessary and unwarranted.

4. Issue 3: "What changes in the statutory authority for the clandestine services should be sought?"

a. We reviewed the votes on the riders to prohibit covert action by the CIA in the House and the Senate. Further, we pointed out that Justice ruled that such actions are legal. Also, we pointed out the House and Senate versions of the Foreign Assistance Act, which is still in conference and has riders requiring Presidential determinations and reports to Congress. Thus, there was ample legal authority in our view.

b. We argued that a law on this subject is simply not required. There are differences among lawyers as to where international treaty obligations would prohibit certain types of covert action. I explained that we had taken the position that the President's inherent authorities as Commander in Chief and also under international law as a sovereign took precedent. Further, there was a recent legal opinion by the State Department, concurred in by the Secretary of State and the Attorney General, that the Vienna Convention on the status of diplomats and embassies did not affect espionage activities.

c. In addition to the stated requirement, Mr. Harris also offered the suggestion that the DDO should have its own legal counsel so that covert actions would be more thoroughly

scrutinized. We took the position that there is no requirement for formal legal opinions as to covert actions since fundamentally these are basic policy questions. As to the suggestion for a separate counsel for the DDO, I stated that the DDO can receive legal review now if it is desired and there seems to be nothing gained by statutorily requiring legal opinions.

5. It appeared throughout that the Commission members were much in accord with views that we expressed. Particularly Chairman Murphy was of the view that if our legal authorities are clear and about which he saw no problem, the less precise one became in law about these matters, the better. All members commented on what they termed an excellent presentation. I think it reasonably clear that these Commission members are not going to have much patience with Mr. Harris' papers and views. 25X1

[redacted]

JOHN S. WARNER
General Counsel

Attachment

cc: DCI
DDCI
DDO
AD/DCI/IC
General Counsel, NSA

December 13, 1974

COMMITTEE II - Intelligence

ISSUES PAPER

STATUTORY AUTHORITY

1. Issue: Should the Commission emphasize that the intelligence community must comply with the laws of the United States?

Although all government agencies must perform in accordance with U.S. law, there have been instances in the past few years where one or more intelligence agencies have engaged in conduct of questionable legality (e.g., approving the "Huston Plan" or giving improper assistance to White House "plumbers"). Urging compliance with the law might be welcomed in some quarters and might add to the effectiveness of American foreign policy by increasing public confidence in the institutions of government.

Essentially, the available options are (a) to state satisfaction that intelligence activities, as delegated by NSC intelligence directives and other executive authority, are conducted in accordance with U.S. law, (b) to reaffirm the importance of compliance with the law or (c) to say nothing about this subject.

2. Issue: Is additional or clarifying legislation desirable for the conduct or control of foreign intelligence activities?

A number of areas possibly needing new legislation have been suggested. The most important of these appear to be:

a. to enhance criminal sanctions for unauthorized disclosure of intelligence sources and methods

b. to establish the National Security Agency as an independent agency

c. to authorize collection of information about multinational entities

d. to establish standards for domestic or transnational collection of intelligence

e. to balance the duties of the DCI for the protection of sources and methods with the duty to supervise declassification of foreign intelligence information.

3. Issue: What changes in the statutory authority for the clandestine services should be sought?

(Note: This issue relates to the Committee's separate consideration of various aspects of clandestine activity).

Among the available options are (a) to revise the National Security Act to make more explicit the subject of clandestine activity, (b) to urge compliance with international treaty obligations of the U.S., (c) to require formal legal opinions within the NSC or Department of State prior to authorizations of covert action by the NSC, or otherwise to assure that clandestine services are compatible with international legal obligations.

25X1 [redacted]

Thank you for your note of 13 December commenting on the classification of Bill Harris' study for the Murphy Commission. We are continuing to discuss with the Commission the classification of a number of their papers and will keep you informed of the progress.

25X1 [redacted]
Associate Deputy to the D/DCI for
the Intelligence Community

18 Dec. 1974

25X1 DCI/IC/CS/S/[redacted] is

Distribution:
Orig. note - Addressee (General Counsel, NSA)
1 - AD/DCI/IC chrono
1 - CS subj.
25X1 (1) - [redacted]

DCI/IC-74-2410

13 DEC 1974

Mr. William R. Harris
16641 Marquez Terrace
Pacific Palisades, CA 90272

Dear Mr. Harris:

Thank you very much for sending the Director a copy of your draft paper. I quite agree that there is no need to meet with Bill Colby at this time and especially since comments from the Legislative and General Counsels have already been forwarded to you. I hope they prove helpful. Expect to see you next week.

Sincerely,

[redacted]
Associate Deputy to the DCI
for the Intelligence Community

25X1

Distribution:
0 - Adsee.
1 - AD/DCI/IC
1 - IC Registry
1 - CS Subject
1 - CS Chrono
1 - [redacted]
DCI/ICS/CS/[redacted] (12 Dec 74)
Revised:
DCI/ICS/[redacted] (13 Dec 74)

25X1
25X1
25X1

74-7959

16641 Marquez Terrace
Pacific Palisades, CA 90272
November 30, 1974

The Hon. William E. Colby
Director of Central Intelligence
Langley, Virginia

Dear Mr. Colby:

Enclosed for your review, should you find it of interest, is a revised draft of the study, Legal Authority for the Conduct and Control of Foreign Intelligence Activities [prepared for the Commission on the Organization of the Government for the Conduct of Foreign Policy].

This study and the issues which it poses will be considered by the Murphy Commission at its next meetings on December 16-17, 1974, by which time comments from OGC/CIA, Professor Elliff of Brandeis, and the former General Counsel, Mr. Houston will be available for consideration by the Commission.

STAT When [redacted] of the IC staff suggested that I discuss my study with you, I responded (last summer) that there was not then reason to consume your time. If you do have an opportunity to read the enclosed study and find that a discussion of issues therein raised would be helpful, I would be glad to come out from Washington at some time during the week of December 16-20. Because this study was prepared for the Murphy Commission and not the executive branch, there is no need for detailed consideration. On the other hand, elaborate review of proposed legislation to protect foreign intelligence sources and methods is probably overly complex for the Commission, but possibly helpful to the executive branch.

There are four issues which may well interest you; the first two relate to your duty to protect intelligence sources and methods; the third relates to your coordination duties vis à vis NSA; and the fourth poses the question as to whether formal legal opinions for covert action, by legitimating certain activities while inhibiting others, would be appropriate. Although my review of draft legislation to protect intelligence sources and methods is likely to elicit a plausible defense from OGC/CIA, there remains the more important policy issue as to whether statutory power of injunctive relief would really assist in fulfilment of your duties under 50 U.S.C.A. §403(b)(3). [See the attached copy of a letter to Mr. Houston, dated November 30, 1974]. Secondly, there is the issue as to whether the legal status of technical collection systems is likely of amelioration.

16641 Marquez Terrace
Pacific Palisades, California 90272
November 30, 1974

Lawrence R. Houston, Esquire
3215 Maud Street, N.W.
Washington, D.C. 20016.

Dear Mr. Houston:

Enclosed please find an updated set of Tabs [A-K, inclusive] which are part of Appendix 1 to the draft study, Legal Authority for the Conduct and Control of Foreign Intelligence Activities, October 30, 1974, revised November 22, 1974. These should be substituted for the Tabs which you should have previously received.

Summary analysis of the Department of Justice draft legislation of October 15, 1974 [Tabs H and K], found at Tabs I and J, suggests that the best working draft of intelligence sources and methods legislation remains the OGC/CIA draft of September 1974, found at Tab F. My substantial dissatisfaction with this legislation has been addressed at pp. 33-38 and in the introductory remarks of Appendix 1.

If the Beacon Theaters constraints are as significant as I believe they are likely to be, then the marginal protection afforded by statutory prescription of injunctive relief is likely to be slight -- scarcely an improvement, if any, beyond relief under rights of contract. The costs of this marginal increment of injunctive relief may include: (i) some probability, however remote, that the entire statute will fail on constitutional grounds; (ii) some probability that the federal judiciary will be less favorably disposed to enforcement of equitable relief when remedies at law (as with the British Official Secrets Act) are seen as increasingly adequate; (iii) the high probability that a proposal for injunctive relief by statute will serve as a lightning rod to attract Congressional opposition, hence reduce the probability of Congressional enactment; and (iv) the costs of "success," assuming that a gag statute is enacted, in reinforcing the view that much that CIA does must be sufficiently nefarious to require such extraordinary protection.

If my analysis is correct (and you may decide it is not), then there remains a tactically complex question as to whether the proposal for injunctive relief should be carried forward into the 94th Congress, so as to obtain credit for its abandonment as part of a legislative compromise, or whether the proposal is only an albatross which should be abandoned at the first polite opportunity, presumably in the interlude between the 93rd and 94th Congressea. Your comments on the many other issues raised in my study would be appreciated.

Sincerely yours,

EU

Bill Lawrence

Third, there is the issue as to whether Congressional legislation for NSA would be appropriate, either to legitimate transnational collection missions or to assure a communitywide responsiveness in lieu of a Defense-dominated clientelle. Both the 1973 and 1974 reports of Leo Cherne, to PFIAB, have reinforced my view that new legislation for NSA would be appropriate. Should you be interested in this issue, it would be appropriate for me to make prior arrangements to transmit to your office copies of the brief summary [Appendix 3, Conf.] deleted per request of NSA from the unclassified text, and a more detailed and highly-classified supplement.

Fourth, the proposition that legal opinions would tend to legitimate greater covert action activity may be of interest. Seymour Bolten, with whom I have discussed this matter, has suggested a meeting with Mr. Nelson. In the event that you would be interested in reviewing this subject with me, it would probably make sense for me to obtain reactions from Mr. Nelson and the OGC staff at an earlier meeting.

Lastly, I would like to note that my lack of satisfaction with various of the intelligence papers prepared for the Murphy Commission is not in any substantial way the consequence of any lack of cooperation on the part of the USIB-member agencies. On the contrary, all the agencies have been most cooperative, and the IC staff has been most helpful. Our intellectual deficiencies are self-imposed.

Very truly yours,

William R. Harris

Enclosure as stated.

DCI/IC-74-2409

13 DEC 1974

Mr. Fisher Howe
Deputy Executive Director
Commission on the Organization of the
Government for the Conduct of Foreign Policy
2025 M Street, N. W.
Washington, D. C. 20506

Dear Fisher:

In view of our conversation on Monday, 9 December, I think you and Fran may find the enclosed papers useful.

Sincerely,

STAT

Associate Deputy to the DCI
for the Intelligence Community

Enclosures

STAT

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OGC 74-2285
4 December 1974

Mr. William R. Harris
16641 Marquez Terrace
Pacific Palisades, California 90272

Dear Mr. Harris:

Enclosed are my comments and those of Mr. Cary, the Agency's Legislative Counsel, on your draft entitled "Legal Authority for the Conduct and Control of Foreign Intelligence Activities." You will note that our comments are quite general and deal with only what we consider to be the major issues in your paper. We appreciate the opportunity to present our views and feel that your work on this subject is most significant.

I understand that you will be in Washington on 16 December for a meeting of the Commission and that you plan to talk to other Agency officers on 17 December. If you have time, I would like to meet with you then so we can discuss your paper in greater detail.

Sincerely,

STAT

John S. Warner
General Counsel

Enc

cc: OLC
IC

Comments by General Counsel and Legislative Counsel, CIA, on Draft Paper Entitled "Legal Authority for the Conduct and Control of Foreign Intelligence Activities"

1. The following comments are general in nature and correspond to the issues raised by Mr. William R. Harris in his draft paper for the Commission on the Organization of the Government for the Conduct of Foreign Policy. Only selected broad, major issues are addressed herein.

Issue #1: Should the Commission in its Report to the President and the Congress reaffirm the fundamental importance of compliance with the laws of the United States in the conduct of intelligence in support of foreign policy?

2. In regard to this issue the CIA is no different than any other Federal agency. All agencies must perform their functions and responsibilities in accordance with the law. There are vague references in the draft's discussion on this point which imply that such has not been the case in the past. Any action by the Commission which makes affirmations along these lines will only serve to unjustifiably increase the belief that intelligence activities are conducted in disregard of U.S. law. Apart from this, such a statement or recommendation appears to be unnecessary, since it is clear that the activities of U.S. intelligence organizations must be performed in accordance with U.S. law and no responsible authority contends otherwise. Perhaps a more appropriate recommendation would be for clarification of the law concerning intelligence activities along the lines of S. 2597 and H.R. 15845. These bills, introduced by Senator Stennis and Representative Nedzi respectively, would expand reporting requirements to Congress and clarify the scope of permissible Agency activities.

3. On page four in discussion of Issue #1, the paper quotes Senator Weicker from the final Watergate Report. This quote concerns the domestic intelligence activities outlined in the Special Report and the decisions in the Huston memorandum approving them. It should be emphasized that CIA has no responsibility for and has not engaged in domestic intelligence collection or activities. These matters more appropriately pertain to internal security and law enforcement, not the Agency's foreign intelligence charter.

Issue #3: Should domestic collection of foreign intelligence or transnational intelligence be safeguarded by (a) legislatively mandated search warrants of courts of competent jurisdiction; (b) executive promulgation of standards for foreign intelligence collection; (c) legislatively mandated protection from public disclosure, and/or criminal sanctions for abuse of domestic, transnational or foreign intelligence; or (d) legislatively mandated standards for domestic collection of foreign intelligence?

4. It can be persuasively argued that present practices and procedures concerning domestic collection of foreign intelligence and transnational intelligence are both adequate and lawful. See United States v. Butenko, 494 F. 2d 593 (3d Cir.), cert. denied, _____ U.S. _____ (1974). Sufficient standards and procedures, established within the Executive branch, already exist. Involvement of the judiciary in the propriety of determinations in this area is unnecessary, unwarranted and unwise. If clarification of procedures pertaining to what the paper terms transnational intelligence is needed, this would be more appropriately accomplished by a specific NSCID than by legislation.

Issue #4: Should the Commission recommend new legislative authority for CIA or other USIB agencies to collect, disseminate and protect foreign intelligence of commercial value?

5. The National Security Act of 1947, as amended, does not exclude or prohibit the collection of commercial or economic intelligence. Indeed, the collection of such intelligence -- critical in today's climate -- is within the ambit of the Agency's mission. Intelligence of commercial or technological value is currently made available to the Departments of Commerce and Treasury among others. The Agency's concern about their dissemination practices pertains only to protection of intelligence sources and methods.

Issue #16: Should the Commission support enactment of legislation to protect foreign intelligence sources and methods from unauthorized disclosure? [See Appendix 1]

6. It is encouraging to note the paper's support for legislation to protect intelligence sources and methods. The suggestion of an analysis of the Agency's proposed legislation under the First Amendment may be appropriate, but other suggestions seem to indicate some misconceptions about the scope of the bill's impact. In the first place, it does not appear

that any "freedom of the press" issues are raised by the bill. Both the injunctive and criminal provisions of the Agency's proposed legislation apply only to a limited, narrow class of persons who have had a fiduciary relationship with the U.S. Government and who have been in duly authorized possession of intelligence sources and methods information. The news media are not affected by the bill. Indeed, absent the unusual circumstances suggested in Near v. Minnesota, 283 U.S. 697 (1931) as possibly warranting pre-publication censorship, New York Times v. United States, 403 U.S. 713 (1971) illustrates the difficulties involved with prior restraints of the press. This is not to say that it would be impossible to draft constitutional legislation which authorizes prior restraints on the press. However, the Agency's bill does not attempt to do so.

7. Next, the paper expresses reservations over the constitutionality of providing both civil injunctive relief and criminal sanctions for dealing with threatened or actual disclosures of intelligence sources and methods. It is suggested that Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959) and a line of case thereunder would indicate the unconstitutionality of the injunctive proceeding (which does not provide for a jury trial and a public trial) in light of the criminal provisions of the bill under which those rights are clearly a constitutional requirement. However, we do not agree with this conclusion nor with the suggestion that the injunctive provisions of the bill are not really needed. First, assuming constitutionality under the First Amendment, statutory authorization for an injunction will make it unnecessary for the Agency to contend with the uncertainty of a district court's acceptance of the contract theory of injunctive relief recognized and granted in United States v. Marchetti, 466 F. 2d 1309 (4th Cir.) cert. denied, 409 U.S. 1063 (1972). As the paper recognizes, in some situations it may be more important to have a ready means to prevent disclosure than to be able to prosecute after the fact. Secondly, the purpose of the civil proceeding is to determine the likelihood that a named defendant is about to engage in the conduct prohibited by the bill and the propriety of enjoining the same. In this type of proceeding the defendant is not entitled to a jury or public trial. The fact that he may be prosecuted in a separate criminal proceeding (in which he would have these rights) for future violations of the statute does not change the nature of the civil proceeding and make the rights to jury and public trial available there.

Issue #20: Should the Commission seek to enhance public access to intelligence information, and accelerated declassification of public records by reform of the responsibility of the Director of Central Intelligence to protect "sensitive intelligence sources and methods" but also to mandate "declassification of such foreign intelligence information as is consistent with these duties." /See Appendix 1, at pages A10-A11/.

8. The Freedom of Information Act, 5 U.S.C. Sec. 552, provides a means whereby individuals can seek to obtain intelligence information. A recent amendment to the Act, over a Presidential veto, is likely to enhance public access to information and bring about further voluntary declassification of many requested intelligence documents. In addition, of course, Executive Order 11652 provides a general declassification schedule for all classified materials. Thus, a proposal to specifically mandate declassification of information consistent with the statutory duty of the Director of Central Intelligence to protect intelligence sources and methods does not appear to be warranted.

9. Not many would argue with the statement that major U.S. policy decisions should be made only after full, open, and informed debate. However, intelligence activities cannot be conducted in a fishbowl. Proposals to increase the flow of information relating to these policy decisions should therefore not focus upon CIA. Furthermore, it must be recognized that there are inherent dangers in placing the ultimate power to decide what intelligence information will be disclosed in the hands of a court, a body not attuned to classification considerations. This is especially true of foreign intelligence matters. Additionally, constitutional questions may be raised by such attempts to force disclosure from the Executive in this area.

Next 1 Page(s) In Document Exempt

Approved For Release 2005/03/24 : CIA-RDP80M01133A001000080024-4

STAT

MEMORANDUM FOR: [redacted]

George Cary called to say that Bill Harris, Murphy Commission, called him to talk about various issues having to do with the Agency's authority--he raised budget, sources and methods, domestic/foreign intelligence gathering, covert action, "compartmented intelligence" given to Congress, and intelligence of "commercial value." George intends to raise this at the morning meeting tomorrow.

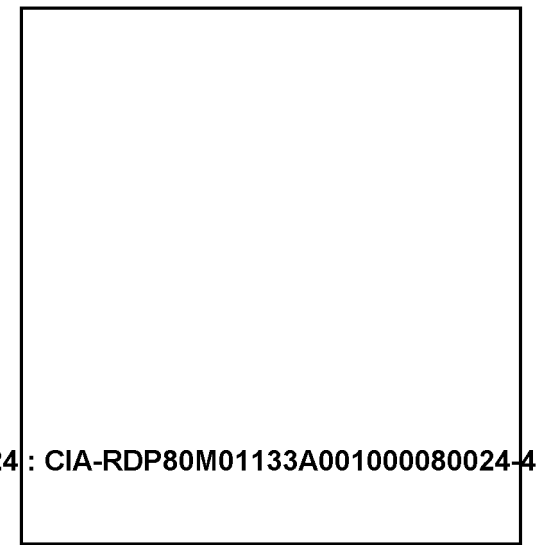
He will be seeking guidance and believes that Harris seems to be getting beyond the Commission's charter. It is fortunate that this has occurred before the Colby-Murphy meeting. Cary was co-operative but non-commital with Harris,

(DATE)

OVER

and will seek additional guidance from the DCI. Harris has been put off until after the Colby-Murphy meeting.

ILLEGIB



STAT

MEMORANDUM FOR: [redacted]

This one defeats me--who authenticates thiskind of information--and how do we get it to NSA?

25X1

[redacted]

forwarded to all 12/11

12/10
(DATE)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

Approved For Release 2005/03/24 : CIA-RDP80M01133A001000080024-4

The RAND Corporation
1700 MAIN ST. • SANTA MONICA • CALIFORNIA 90406

5 December 1974

STAT [redacted]
IC Staff
Headquarters Building
Central Intelligence Agency
Washington, D.C. 20505

Dear Ms. Taylor:

Enclosed are seven (7) copies of classified Appendix 3, tentatively classified Confidential, to be submitted for authentication of the classification and transmittal to the following persons:

✓ 1. The Honorable William E. Colby
Director of Central Intelligence

✓ 2. Mr. John S. Warner
OGC/CIA

✓ 3. Mr. George Cary
OLC/CIA

STAT ✓ 4. [redacted]
CIA

STAT ✓ 5. [redacted]
IC Staff

STAT 6. [redacted]
General Counsel
National Security Agency
Ft. Meade, Maryland

7. Mr. William R. Harris
The Rand Corporation

Sincerely,

William R. Harris

WRH:taj

Enclosures: Seven (7) copies of Appendix 3, dated 11-22-74

STAT

STAT [redacted]

[When detached, this page is unclassified]

APPENDIX 3

CLASSIFIED INFORMATION, DELETED PER DETERMINATION OF THE NATIONAL SECURITY AGENCY (U), FROM THE REVISED DRAFT STUDY, W. R. HARRIS, LEGAL AUTHORITY FOR THE CONDUCT AND CONTROL OF FOREIGN INTELLIGENCE ACTIVITIES: A SUMMARY OF ISSUES PREPARED FOR THE COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY

November 22, 1974

STAT

STAT

[When detached, this page is unclassified]

STAT If the adage that "hard cases make bad law" applies, the results of inattention could neither encourage adequate foreign intelligence collection nor safeguard the liberties of private citizens.

STAT An era of shifting power respecting scarce natural resources, threats of international cartel boycotts, competition for agricultural exports and multinational corporation spillovers (the larger of which have annual value-added in excess of the gross national products of some 80 U.N. member-states[18]) is an era requiring transnational intelligence,[18a] not strictly domestic and not strictly foreign.

STAT The conduct of foreign policy will be impeded if transnational U.S. intelligence is not obtained legitimately, and under appropriate safeguards. [At the present time, the issue of illegitimacy results in automatic computer destruction of some transnational intelligence, undercollection and undertargeting, and overly restrictive dissemination of some transnational intelligence of considerable value.]

Issue #3: Should domestic collection of foreign intelligence or transnational intelligence be safeguarded by (a) legislatively mandated search warrants of courts of competent jurisdiction; (b) executive promulgation of standards for foreign intelligence collection; (c) legislatively mandated protection from public disclosure, and/or criminal sanctions for abuse of domestic, transnational, or foreign intelligence; or (d) legislatively mandated standards for domestic collection of foreign intelligence?

STAT 17 (cont.) dis'd, Oct. 15, 1973). See generally, Note, "Foreign Security Surveillance and the Fourth Amendment," 87 Harv. L.Rev. 976 (1974); John T. Elliff, "The FBI and Domestic Intelligence," in R. H. Blum (ed.), Surveillance and Espionage in a Free Society, at 20-45 (1972).

STAT 18 Joseph S. Nye, Jr., "Multinational Corporations in World Politics," 53 Foreign Affairs 153 (Oct. 1974).

STAT 18a Transnational intelligence is herein defined as intelligence from international communications received in or transmitted from the United States. A portion constitutes foreign intelligence, even if collected within the U.S., a portion constitutes internal security intelligence, even if collected abroad.

STAT [redacted] Without a legislative mandate, NSA transnational collection will be impeded, both by doubts as to legal authority and by NSA resistance to a broadened economic and commercial intelligence mission.

STAT [redacted] Reasons against legislative authorization of NSA duties include the following: first, present implied authority is at least presumptively sufficient; second, the less said about NSA the better[31]; third, foreign intelligence respecting U.S. citizens and corporate activity abroad should not be targeted, nor should additional collection be permitted.

STAT [redacted] Reasons in favor of NSA legislation include the following: first, if the National Security Act of 1947 is to be amended to protect intelligence sources and methods, or for other purposes, an opportunity to also pass NSA legislation would be present; second, a legislative mandate for NSA could limit co-optational tendencies of the Joint Chiefs of Staff, in an era when economic and natural resource issues should assume increasing importance; third, transnational intelligence collection by technical means is less intrusive than, and a basis for delimitation of various domestic intelligence efforts of the Federal Bureau of Investigation and other domestic agencies; fourth, it is technically impossible to avoid interception of all U.S. citizen and corporate communications abroad, so without authorization information is of necessity collected, then destroyed, with loss of valuable intelligence; fifth, that intelligence which is collected, if of ambiguous legitimacy, is so tightly held as to preclude its appropriate utilization without a more direct legislative mandate; sixth, the Director of NSA should be appointed subject to the advice and consent of the Senate; seventh, NSA should not by executive determination alone be precluded from production of "finished intelligence," an impediment to NSA analytic creativity.[32]

STAT [redacted]

31 Prior to publication of David Kahn's book, The Codebreakers (1967) this notion had an element of plausibility, but with official release of the Huston memos (1970, published in 1973), and officia confirmation of the bold-faced portions of Marchetti & Marks (1974 such an argument would perhaps suffice to convince an ostrich.

32 If, however, one adopts the second Oxford English Dictionary definition of finished as "consummate, perfect, accomplished," 4 O.E.D. 236, one need not trifle with an ethereal constraint.

November 11, 1974

STAT [redacted]
IC Staff
Headquarters Building
Central Intelligence Agency
Langley, Va.

delivered to [illegible] Colker 11/13

25X1 Dear [redacted]

Enclosed please find a copy of the preliminary draft of my paper, Legal Authority for the Conduct and Control of Foreign Intelligence Activities, with Appendices 1 and 2.

I would appreciate your transmitting this copy to [redacted] STAT
STAT [redacted] (DDO) so that he may have an opportunity to read it before I have dinner with him on November 18th.

STAT Should you or [redacted] wish to obtain a photocopy for your own review, feel free to make a copy from that which is enclosed providing you do not delay [redacted] access STAT to his copy.

Sincerely,

Bill

William R. Harris
16641 Marquez Terrace
Pacific Palisades, CA 90272

November 11, 1974

Mr. John S. Warner
General Counsel
Central Intelligence Agency
Langley, Virginia

Dear Mr. Warner:

Enclosed is a copy of my draft paper, Legal Authority for the Conduct and Control of Foreign Intelligence Activities, Appendix 1 (Protection of Foreign Intelligence Sources and Methods), and Appendix 2(Proposed Transfer of Functions).

Your comments would be appreciated, hopefully on the range of topics in addition to the protection of sources and methods (reviewed in issues 16, 17, 20 and Appendix 1). Reasonable minds may differ about what is Constitutional, and what proposals within these bounds are most appropriate. My own recommendations with respect to your draft legislation are contained at page 37 of the text. Various issues which are addressed are raised not because I personally favor proferred changes but because others may, and because it was my task to identify relevant issues of legal authority or jurisdictional responsibility.

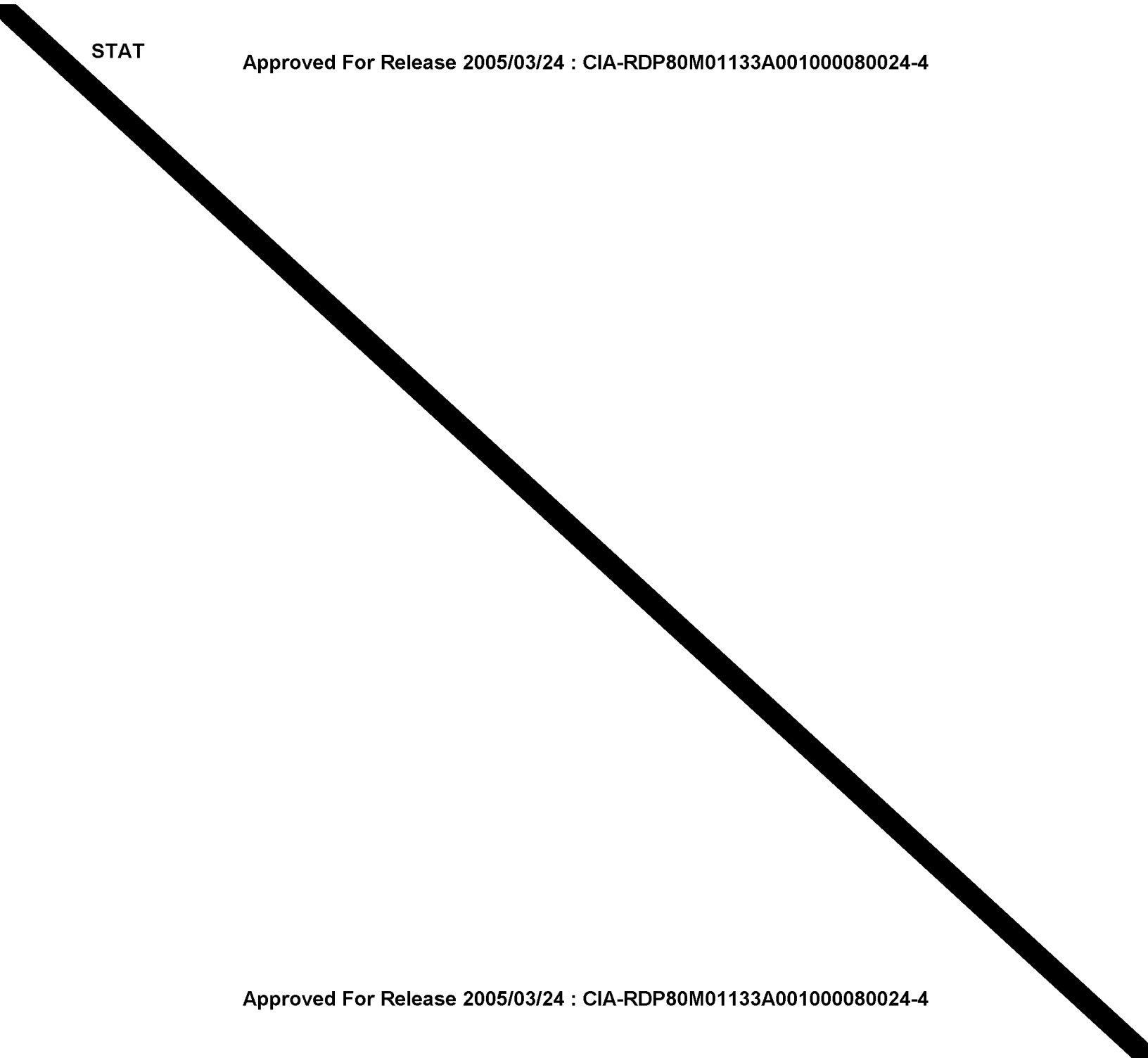
As soon as additional copies are available, I shall also transmit a copy of my paper to the legislative counsel, Mr. Cary.

Sincerely,

William R. Harris
16641 Marquez Terrace
Pacific Palisades, CA 90272.

Enclosures as stated.

STAT cc: [redacted] IC Staff



Approved For Release 2005/03/24 : CIA-RDP80M01133A001000080024-4

11 NOV 87 IC REGISTRY ROUTING SLIP

	OFFICE	INITIALS	DATE		OFFICE	INITIALS	DATE
	D/DCI/IC				MPRRD		
2	AD/DCI/IC	Seen			CPAD		
1	EXEC OFF	M	11/12		PRD		
5	PD/PLANS				USIB SEC		
	SA to AD				Sec Comm		
3	CS				IHC		

25X1

ACTION REQUIRED AND ASSIGNED TO:	SUSPENSE DATE:	INFORMATION ONLY

IC Rec 1 cys. Cys furns: D/IC____ AD/IC____ EO____ CS/S____ MPRRD____ PRD____
CPAD____ USIB/SEC____ PD/Plans____

Comment:

FYI

Comment:

Comment:

_____ ICS REGISTRY

4 NOV 1974

MEMORANDUM FOR: Deputy Director for Administration

SUBJECT : Murphy Commission Discussion with Post Office Department

STAT [ ] 1. On 4 November 1974 I talked with [ ] STAT who advised that he had met with Mr. Harris of the Murphy Commission on 3 November. He had queried Mr. Harris as to why he was interested in talking with the Post Office Department and told him we learned of his meeting with the Post Office Department from Mr. Cotter, who was interested in establishing bona fides for Mr. Harris.

2. Mr. Harris advised that he had read the Intelligence Advisory Committee report which was prepared in June 1970. This Committee was headed by J. Edgar Hoover and Mr. Helms served on the Committee. The report that came out as a result of the Committee's efforts became known as the Huston Report and it referred to postal intercept. The document was surfaced by John Dean during the Watergate hearing. Mr. Harris indicated that his review of this report stemmed his interest in talking to the Post Office Department.

3. Another reason Mr. Harris wanted to talk to the postal inspectors concerned the Special Prosecutor's office. The Special Prosecutor's office informed Mr. Harris that they had had many complaints that the Administration might be illegally using the Post Office to gain information they wanted. The Special Prosecutor's office did not pursue this but this also peaked Mr. Harris' interest in the Postal Inspector's office. According to [ ] Mr. Harris STAT was concerned that if there was a scandal on postal surveillance, this might have an adverse effect on the Intelligence Community.

STAT 4. [ ] advised that he thought that was somewhat afield from the objectives of the Murphy Commission. Mr. Harris said he thought it was probably on the periphery and agreed to drop this particular subject from the Murphy Commission work. He said that he would plan to visit with postal officials, however, because of his interest in this area.

STAT [ ]

5. It was agreed that I would brief Mr. Cotter of the Post Office on these developments. On 4 November I contacted Mr. Cotter and explained Mr. Harris' interest in talking to them. Mr. Cotter siad that he would have absolutely no problem with this and in fact he had been through this issue many times. He felt that he could be helpful to Mr. Harris now that he understood his interest. He also indicated that he would contact me and brief me on the results of their meeting.

6. From the above, it would appear there is no particular concern with Mr. Harris' visit to the Post Office Department. If I learn of anything significant in this area, however, you will be advised.

STAT

Director of Security